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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAR 16 1993

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In the Matter of]

Rulemaking to Amend Part 1 and]
Part 21 of the Commission's]
Rules to Redesignate the 27.5-]
29.5 GHz Frequency Band and to]
Establish Rules and Policies]
for Local Multipoint Distribution]
Service (LMDS)

CC Docket No. 92-297

RM-7872

RM-7722

To: The Commission

Comments of EMI Communications Corporation

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EMI Communications Corporation appreciates the opportunity to comment in this Federal Communications Commission Rulemaking proceeding.

We applaud the Commission on its initiative in promoting the development of new technologies and support this "Pleading Cycle" process.

As a facilities based interexchange carrier, EMI employs various radio technologies which include operations in the 2, 6, 11, 18 and 38 GHz bands.

EMI initially filed 9 of the over 900 applications for waiver and license grants that most recently were dismissed in the above noted FCC actions.

The following comments/suggestions are respectfully submitted for consideration in this proceeding.

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* GRANTING TWO LICENSEES AUTHORITY TO OPERATE IN A GIVEN
SERVICE AREA CONSTITUTES ADMINISTRATIVE EXCLUSIVITY *

It is appreciated that the Commission is supporting development and the implementation of new services by accommodating what would seem to be a multitude of willing applicants and potential system operators of LMDS type systems in the 28 GHz band. This is laudable and EMI agrees with the intent, but maintains several significant reservations.

It would appear that the 28 GHz frequency band which contains 2000 MHz of spectrum is well suited for several applications that can promote the public interest.

Two such applications are recognized and addressed by this proceeding, specifically, they are video and data.

With today's digital compression techniques and the continued development of advanced modulation schemes, EMI suggests that two grants of 1000 MHz of spectrum each is unnecessary, could promote spectral inefficiency and does not foster sufficient competition.

EMI suggests a different approach. Instead of granting two licensees 1000 MHz of spectrum to provide omni directional video, data and voice services, consider the feasibility of four licensees.

Two of the four allocations would consist of 750 MHz of spectrum each. The 750 MHz would be authorized for primarily video services utilizing point-to-point, point-to-multipoint or omni directional topologies.

The remaining two allocations would consist of 250 MHz of spectrum each. The 250 MHz would be authorized for primarily data/voice services which could also utilize the above three topologies.

This approach, or something similar would have several merits that go beyond that which is suggested in the NPRM. First, it allows for more than only two participants providing combined services. In fact, it doubles the number of service providers. Secondly, it promotes focus on primary services. This focus fosters expedient delivery of the various authorized services, thus potentially bringing the combined services to the public sooner.

Additionally, this approach accommodates the companies that have been developing plans to utilize the 28 GHz spectrum for point-to-point applications within the framework of rules that have applied to this band since it was allocated in 1959. Also, the approach allows equipment manufacturers to continue their efforts with any research and development performed to date without sacrificing those efforts in light of the new rules.

To add further merit to this approach, if the 28 GHz spectrum should be awarded by auction, this allows for flexibility with the companies that choose to bid based on the type of proposed service and bandwidth.

EMI strongly suggests that serious consideration should be given to this type of approach because it reflects a broader perspective, considers more services, does not foster administrative exclusivity and is in the greater public interest.

* REQUIRING SERVICE TO BE AVAILABLE TO 90% OF THE POPULATION IN A
GIVEN SERVICE AREA WITHIN THREE YEARS IS TOO AGGRESSIVE *

EMI suggests that 90% population availability of service mandated by the FCC is too aggressive, 75% would seem to be a more realistic figure.

However, we feel that in light of EMI's suggestion of granting four awardees, two primary video and two primary data/voice, a requirement to make service available to a prescribed percentage of population should only apply to the video licensees.

Where data/voice services are concerned it should be understood that the services will target commercial as well as possible residential customers. Being that this type of service is significantly different than video services which primarily targets residential subscribers as a customer base, it would seem logical that a market driven approach to implementation is necessary.

* COMMON CARRIER AND NON-COMMON CARRIER STATUS *

In this action, the Commission is proposing that an applicant could determine on a cell-by-cell or frequency-by-frequency basis whether a system, or part thereof, is regulated as common carrier or non-common carrier.

Considering the requirement for a licensee to be able to provide service to a major percentage of the population of a given service area within three years of an initial grant, it would seem logical to assume that the system would be classified as a common carrier.

If a system has the capability to provide service to 75% or 90% of the population within the service area, what would prompt the operating company to limit the service to specific customers or customer groups?

If an operating company were to impose a limitation on a system that is capable of serving more customers, would that be in the public interest?

It would appear that this issue becomes more complex if the grant is for combined video, data and voice applications with none of the service types being prioritized or considered primary.

Conversely, if the allocation allows for more than just two grants and the awardees are licensed for primary video or primary data/voice, the additional flexibility would enhance the ability to serve the public interest regardless of the status of a system or portion of a system.

If the Commission wishes to promote the flexibility of an operator in the LMDS band to choose common carrier or non-common carrier status, it would seem logical to categorize the various services and require an applicant to file for a primary service along with the choice of status.

In our opinion this type of an approach would be in the public interest and promote flexibility in service delivery.

* SATELLITE AND TERRESTRIAL SHARING OF THE 28 GHZ BAND *

With a proposed terrestrial use for omni directional video at 28 GHz, it would seem technically inappropriate to attempt to share the spectrum with satellite services on a co-channel basis.

If the video application truly utilizes omni directional antennas, it would seem that frequency separation is indicated or interference could occur.

Frequency separation could be achieved by reducing the allocated bandwidth of the terrestrial video systems.

* IS LMDS A WIRELESS CABLE TECHNOLOGY AND SUBJECT TO THE 92 CABLE
ACT CROSS OWNERSHIP PROHIBITION *

It is hard to imagine that any knowledgeable individual considering 49 or more video programs made available on a subscriber basis via 28 GHz radio technology would fail to classify the technology as wireless cable.

EMI views the question more appropriately as being; is LMDS a wireless cable service?

From a primarily video service perspective, one could conclude so, depending on one's interpretation of the definition of cable television. From a data/voice perspective, it would appear not.

This question/issue is another reason that EMI suggests that allocations at 28 GHz should be for "Primary Video" or "Primary Data/Voice" as previously addressed in these comments.

EMI reiterates that it would be in the public interest to allocate more than only two licensees providing combined services. Additional grants based on service type would answer or simplify many of the questions or issues herein.

* TRANSFERRING AN LMDS LICENSE *

EMI concurs with the Commission's proposal to limit the transfer of an LMDS grant until the system is operational and serving the public interest. This should reduce speculative filings and limit applications to those who truly intend to build a system. Further, EMI supports the one application per market suggestion.

* APPLICATIONS FOR CONSTRUCTION EXTENSIONS *

EMI concurs with the Commission's proposal to not issue construction permit extensions beyond the three year period for video LMDS grants.

* LICENSE TERMS *

EMI suggests that LMDS licenses should be for a ten year period.

Further, we see no reason that license renewals should be handled any differently than any other Part 21 service. To develop new "Renewal Expectancy" rules for this service would be inappropriate.

* ONE DAY FILING WINDOW FOR INITIAL LMDS APPLICATIONS *

EMI concurs with the Commission's proposal to limit the filing window to one calendar day per market for the initial applications for LMDS service areas.

Further, we are in agreement with the suggestion that the initial filing be a "post card" type with a "letter perfect" detailed filing to follow, if a post card applicant is chosen.

We also share the Commission's opinion that 30 days should suffice as the time in which the detailed filing should be submitted by a selectee if a lottery process is the means by which a selection is made. However, we can foresee the possibility of a selectee for certain BTA's requiring additional time and a provision for granting reasonable extensions should be implemented.

Additionally, we support the proposal of not reopening any filing windows for service areas whose windows are closed until all of the first round applications have been processed.